



[Billing Code: 6750 - 01S]

FEDERAL TRADE COMMISSION

**Agency Information Collection Activities;  
Submission for OMB Review; Comment Request**

**AGENCY:** Federal Trade Commission (“Commission” or “FTC”).

**ACTION:** Notice.

**SUMMARY:** The FTC intends to ask the Office of Management and Budget (“OMB”) to extend through December 31, 2014, the current Paperwork Reduction Act (“PRA”) clearance for the information collection requirements in the Commission’s Business Opportunity Rule (“Rule”). That clearance expires on December 31, 2011.

**DATES:** Comments must be submitted on or before [insert date 30 days from FEDERAL REGISTER date of publication].

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “16 CFR Part 437: Paperwork Comment, FTC File No. P114408” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/BusinessOptionRulePRA2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Christine M. Todaro (202) 326-3711, Division of Marketing Practices, Room 286, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.



## **SUPPLEMENTARY INFORMATION:**

*Title:* Business Opportunity Rule, 16 CFR Part 437

*OMB Control Number:* 3084-0142

*Type of Review:* Extension of currently approved collection

*Abstract:* The Rule requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information relating to the seller, the seller's business, the nature of the proposed business opportunity, as well as additional information regarding any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims. These disclosure and recordkeeping requirements are subject to the PRA.

The Rule is designed to ensure that prospective purchasers of a business opportunity receive information that will help them evaluate the opportunity that is presented to them. Part 437 was promulgated in March of 2007, concurrently with the amendment of the Franchise Rule, and it mirrors the requirements and prohibitions of the original Franchise Rule. The FTC recently announced final amendments to the Rule that will take effect on March 1, 2012.<sup>1</sup> This notice, however, applies to the current requirements of Part 437, which remain in effect until February 28, 2012.<sup>2</sup>

On September 26, 2011, the Commission sought comment on the information collection requirements associated with the Rule currently in effect. 76 FR 59,397. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44

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<sup>1</sup> See <http://www.ftc.gov/opa/2011/11/busopp.shtm> (November 22, 2011 press release).

<sup>2</sup> A separate PRA analysis has been prepared within the associated rulemaking that addresses the changes in PRA burden per respondent (largely, reductions due to streamlined disclosure requirements) attributable to the final amendments and the Rule's new applicability to work-at-home opportunity sellers.

U.S.C. 3501 et seq., the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

*Estimated annual hours burden:* 16,750 hours

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 2,500 business opportunity sellers, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.

The burden estimates for compliance will vary depending on the particular business opportunity seller's prior experience with the original Franchise Rule. Staff estimates that 250 or so new business opportunity sellers will enter the market each year, requiring approximately 30 hours each to develop a Rule-compliant disclosure document. Thus, staff estimates that the cumulative annual disclosure burden for new business opportunity sellers will be approximately 7,500 hours. Staff further estimates that the remaining 2,250 established business opportunity sellers will require no more than approximately 3 hours each to update their disclosure document. Accordingly, the cumulative estimated annual disclosure burden for established business opportunity sellers will be approximately 6,750 hours.

Business opportunity sellers may need to maintain additional documentation for the sale of business opportunities in states not currently requiring these records as part of their regulation of business opportunity sellers. This might entail an additional hour of recordkeeping per year. Accordingly, staff estimates that business opportunity sellers will cumulatively incur approximately 2,500 hours of recordkeeping burden per year (2,500 business opportunity sellers x 1 hour).

Thus, the total burden for business opportunity sellers is approximately 16,750 hours (7,500 hours of disclosure burden for new business opportunity sellers + 6,750 hours of disclosure burden for established business opportunity sellers + 2,500 of recordkeeping burden for all business opportunity sellers).

*Estimated annual labor cost:* \$3,600,000

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff presumes an attorney will prepare or update the disclosure document at an estimated \$250 per hour.<sup>3</sup> As applied, this would yield approximately \$3,562,500 in labor costs attributable to compliance with the Rule's disclosure requirements ((250 new business opportunity sellers x \$250 per hour x 30 hours per seller) + (2,250 established business opportunity sellers x \$250 per hour x 3 hours per seller)).

Staff anticipates that recordkeeping would be performed by clerical staff at approximately \$15 per hour.<sup>4</sup> At 2,500 hours per year for all affected business opportunity sellers (see above), this amounts to an estimated \$37,500 of recordkeeping cost. Thus, the combined labor costs for recordkeeping and disclosure for business opportunity sellers is approximately \$3,600,000.

*Estimated non-labor cost:* \$3,887,500

Business opportunity sellers must also incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. Staff estimates that 2,500 business opportunity sellers print and mail 100 documents per year at a cost of \$15 per document, for a total cost of

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<sup>3</sup> Based upon staff's informal discussions with several franchises in various regions of the country.

<sup>4</sup> Based on the "National Compensation Survey: Occupational Wages in the United States, 2010," U.S. Department of Labor, Bureau of Labor Statistics (May 2011), available at <http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf>. Clerical estimates are derived from the above source data, rounded upward, for "new accounts clerks."

\$3,750,000 (2,500 business opportunity sellers x 100 documents per year x \$15 per document).

Business opportunity sellers must also complete and disseminate an FTC-required cover sheet that identifies the business opportunity seller, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Although some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of “collection of information” under the PRA, *see* 5 CFR 1320.3(c)(2), there are residual costs to print and mail these cover sheets, including within them the presentation of related information beyond the supplied text. Staff estimates that 2,500 business opportunity sellers complete and disseminate 100 cover sheets per year at a cost of approximately \$0.55 per cover sheet, or a total cost of approximately \$137,500 (2,500 business opportunity sellers x 100 cover sheets per year x \$0.55 per cover sheet).

Accordingly, the cumulative non-labor cost incurred by business opportunity sellers each year attributable to compliance will be approximately \$3,887,500 (\$3,750,000 for printing and mailing documents + \$137,500 for completing and mailing cover sheets).

*Request for Comment:*

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [insert date 30 days after publication in Federal Register]. Write “16 CFR Part 437: Paperwork Comment, FTC File No. P114408” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . . ," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>5</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/BusinessOptionRulePRA2> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

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<sup>5</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

If you file your comment on paper, write “16 CFR Part 437: Paperwork Comment, FTC File No. P114408” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 30 days after publication in Federal Register]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Willard K. Tom  
General Counsel.

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